Supporting Document 5
Item No. 16

San Diego Bay Council

A coalition of San Diego environmental organizations dedicated to protection and restoration of San Diego's coastal water resources

RP 12-5-02
ASR 12/5/02

November 27, 2002

Chairman Jack Minan and Regional Board Members
Regional Water Quality Control Board
9174 Skypark Court
San Diego, CA 92123-4340

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RE: Bay Council Comments on Tentative Order R9-2002-0175, NPDES NO. CA0109134, Waste Discharge Requirements for National Steel and Shipbuilding Company, San Diego County

Dear Chairman Minan and Regional Board Members:

The Bay Council has the following comments on Tentative Order R9-2002-0175, NPDES NO. CA 0109134, Waste Discharge Requirements for National Steel and Shipbuilding Company ("NASSCO"), San Diego County.

In general, this permit fails to meet the requirements of the NPDES permitting system by not promulgating standards for known contaminants and failing to require monitoring for those constituents. Further, the intent of the NPDES system is to gradually move toward elimination of pollutant discharges. In order to accomplish that, each successive permit should develop more stringent standards that increase environmental protection. At a minimum, each permit issued should include adequate standards and monitoring so that impacts of the discharge are fully understood. In fact, federal regulations require that any discharge that has the 'reasonable potential' to exceed the State water quality objective must contain an effluent limitation for that pollutant. The Clean Water Act makes no exception to this, even when technological limits prevent the quantification of the pollutant.

Our specific comments are related to the NASSCO permit. The Bay Council supports these renewed permits as long as a few important changes are made. These are listed below.

WDR Findings

Finding 11—Navy study

Bay Council recommends that Finding 10 **be deleted in its entirety**. The fact that the U.S. Navy was given four years to undermine protection of San Diego Bay by in another area establishing its own discharge limits is no cause for celebration. A similar opportunity should not be "encouraged" for the Shipyards. In fact, the yards are currently meeting the current,

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applicable standard so that a weaker standard would not be allowable due to anti-degradation policy requirements. We strongly support the actions taken by the yards to divert their most toxic discharges. The Board should not facilitate their undoing.

We all understand and continue to object to the exemption and non-application of the full force of the Clean Water Act to the United States Military.. This failure of the law, however, should not be allowed to metastasize through out the other Bay permits. We strongly urge removal of this direction by the Board.

Finding 12—Sediment Monitoring

We support holding sediment monitoring in abeyance until the cleanup is completed. While, we all fully expect that the sediment remediation be started in the Spring of 2003, we also know that this is a contentious issue and it may not proceed on the exact timeline we estimate. We would recommend that a deadline for recommencing the sediment monitoring be specified in terms of *"The first set of samples.....are required to be taken during the time the last post cleanup sampling is conducted,* ***but no later than January 2004****"* or some other specific, reasonable deadline.

Finding 16 – Best Management Practices (BMPs): BMPs should not replace numeric limits required under California Toxics Rule (CTR)

In May 2000, the U.S. Environmental Protection Agency published the California Toxics Rule ("CTR"), which established water-quality objectives for state waters, including San Diego Bay. The CTR was adopted by the State Water Resources Board. The CTR sets numeric-specific effluent limitations for 126 priority pollutants, including copper, nickel, and zinc, that 'causes or has the reasonable potential to cause' a violation of CTR. As the Fact Sheet of this Tentative Order point out, copper, nickel, and zinc were found at high enough levels to require frequent monitoring.

In addition, 40 CFR 122.44(k)(3) states that Best Management Practices (BMPs) are permissible for the control or abatement of discharge of pollutant *only* when "numeric effluent limitations are infeasible." The Board has not made any such finding in this Tentative Order. Absent a demonstration of infeasibility and a finding expressing that, BMPs are not adequate in the Tentative Order to comply with CTR.

Furthermore, the argument that 122.44(k)(2) applies instead of 122.44(k)(3) is incorrect. Section 402(p)(3)(B)(iii) of the CWA, which permits the use of controls that reduce the discharge of pollutants to the maximum extent practicable, including best management practices, clearly only applies to discharges from municipal storm drains, not industrial storm water as is the case in this Tentative Order.

Finding 23 -- Intake Credits

In general, we are opposed to the allowance of pollutant intake "credits". We know the Bay is highly polluted from all of the controlled and uncontrolled discharges however, that is no reason to allow pollution to be discharged in excess of criteria.

DISCHARGE SPECIFICATIONS

#1 Need to add pollutant limits

First and foremost, discharge limits must be added for those contaminants that were found in discharges from the yards. As a result, standards need to be added to this permit for copper, antimony, arsenic, selenium, and zinc. These must be added for all discharges that were assessed and contained these contaminants, whether or not they exceeded the current criteria. Limits must be included to ensure compliance with the criteria in the CTR. Without these additions, the finding cannot be made that the permit controls pollutant and protects beneficial uses.

#1 Need to add temperature limits

The Tentative Order fails to set temperature limits for discharges. Instead, it states that "elevated temperature discharges shall comply with limitations necessary to the protection of beneficial uses." Bay Council believes that this Tentative Order should mirror the temperature requirements under the Southwest Marine Order that sets temperature limits at "not more than 20 degrees F greater than natural temperature of receiving waters." The failure to set any limit threatens the protection of beneficial uses.

#3 No credits for intake toxicity

Again, we oppose the allowance for toxicity "credits" for discharges from non-contact cooling water, fire protection water, and floating drydock ballast tank water.

RECEIVING WATER LIMITATIONS

Bay Council reiterates our longstanding concern with receiving water limits that are not numeric/specific and for which no monitoring is required. For example, receiving water limitation #3 requires that marine communities shall not be degraded. However, there is no monitoring required to assess if this limitation is being met.

PROVISIONS

Provision #7

We appreciate the statements that implementation of a BMP program itself does not constitute compliance. However, it is not clear from this provision that if the BMP fails, or a discharge causes or contributes to a violation what happens after the BMP is re-evaluated and a report is done. At some point, it needs to be made clear that there is a violation of the permit and that enforcement action will be taken.

MONITORING AND REPORTING PROGRAM

Point Source Discharges

We appreciate that there is required monitoring for copper, but without a discharge limit, such monitoring is meaningless and means that the MRP fails to achieve its purpose listed on page 1, section A. Further, monitoring for antimony, arsenic, selenium, and zinc must be added here.

J. Waste Hauling Log

We appreciate that the DTSC keeps a file of waste haulers from the Shipyard. However, we believe that this to be relevant information for a public reviewer of the reporting of the NPDES permit for a discharger. The name, address, and contact and license number of waste hauler should be required in the reporting under the reporting requirements for the NPDES permit.

Emerging Issue

As we continue to be involved with the NPDES permitting process for San Diego Bay there is an emerging issue that the Regional Board and the community needs to investigate. The issue is regarding the quality and potential need for treatment of runoff after the first flush has been diverted. The science to date shows that toxicity and contamination is reduced in later flows but it is not as clear if it is reduced enough to meet all water quality protection standards. Further, we do not know the concentration of contaminants in flows from Shipyard sites after diversion since many boat and ship yards divert almost all of their runoff. As more industrial areas around the Bay come under permit full diversion of all runoff may need to be replaced by treatment or other actions to meet standards after first flush diversion. EHC recommends that a working group or other effort on a parallel track be established to begin to examine and, if necessary, address the issues of treatment of this runoff, improvement of BMPs, and other actions necessary to ensure that runoff after diversion also meets protection standards for San Diego Bay.

Thank you for the opportunity to comment on this important issue.

Formal Positions expressed in letter are of signatory organizations only.

Sincerely,

Laura Hunter
Environmental Health Coalition

Bruce Reznik
San Diego Baykeeper

Cory Briggs,
Divers' Environmental
Conservation Organization (DECO)

cc: John Robertus, Executive Officer

Formal Positions expressed in letter are of signatory organizations only.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

MEMORANDUM

Supporting Document 6
Item No. 16

TO: **John Robertus**

FROM: **Paul J. Richter, WRCE**
SAN DIEGO REGIONAL WATER QUALITY CONTROL BOARD

DATE: **January 23, 2003**

SUBJECT: **NATIONAL STEEL AND SHIPBUILDING COMPANY (NASSCO) RESPONSE TO COMMENTS REGARDING TENTATIVE ORDER NO. R9-2003-0005**
ITEM NO. 16

The Regional Board received a comment letter dated November 27, 2002 from the *San Diego Bay Council* for the previous version of the tentative Order, Order No. R9-2002-0175, which had been scheduled for the December Regional Board meeting. Because the Union Tribune failed to publish the notice for the meeting, the Regional Board did not consider tentative Order No. R9-2002-0175 at its meeting. Subsequently, the tentative Order was slightly modified and renumbered as Order No. R9-2003-0005. The revised tentative Order was mailed to the discharger and interested parties on December 17, 2002. As of January 13, 2003 staff has not received any comments for tentative Order No. R9-2003-0005.

The identification of the comments in this memorandum attempted to follow the numbering regime in the comment letter. Brief paraphrases of the concerns listed in the letter and staff's response are provided below. Some of the concerns have been grouped into one comment. The original letters should be reviewed to be sure the reader understands the comment and to ensure that I have accurately summarized the comment.

A. San Diego Bay Council letter dated November 27, 2002.

General Comment

Permit Requirements: The permit fails to meet requirements of the NPDES permitting system by not promulgating standards for known contaminants and failing to require monitoring for those constituents.

Response: Effluent limitations for point source discharges (except for storm water) are specified for oil and grease, settleable solids, turbidity, pH, and temperature. Effluent limitations for industrial storm water are based on whole effluent toxicity (WET) and require a 90% survival

rate 50% of the time. Effluent limitations for the pollutants specified in Order No. R9-2003-0005 are based on the use of best available technology economically achievable (BAT) for the removal of pollutants. Where water quality-based effluent limitations (WQBEL) were considered, the data indicated that either effluent limitations were not reasonable, or that more information was needed to establish WQBEL. The tentative Order requires monthly monitoring (pp. M-4&5 & M-12) for a reasonable potential analysis for the Implementation Policy. The monthly monitoring is required for copper, nickel, and zinc for the discharges of Fire Protection Water, Hydrostatic Relief Water, and Ways and Graving Dock Flood water. The tentative Order may be modified if the monitoring information indicates that discharge is causing or contributing to a receiving water violation. Annual monitoring is required of other metals and chemicals.

WDR Findings

Finding 11—Navy study

Comment 1: The San Diego Bay Council (SDBC) recommends that Finding 11 be deleted in its entirety. The fact that the U.S. Navy was given four years to undermine protection of San Diego Bay by in another area establishing its own discharge limitations is no cause for celebration. A similar opportunity should not be "encouraged" for the Shipyards. In fact, the yards are currently meeting the current, applicable standard so that a weaker standard would not be allowable due to anti-degradation policy requirements. We strongly support the actions taken by the yards to divert their most toxic discharges. The Board should not facilitate their undoing.

Response: The Regional Board considers that additional information regarding toxicity and industrial storm water discharges will help establish a comprehensive analysis of the potential impacts to water quality.

Finding 12—Sediment Monitoring

Comment 2: Because the sediment cleanup may take an indefinite time, the SDBC recommends a deadline date to commence sediment sampling be required by the tentative Order. A recommended date is no later than January 2004.

Response: Monitoring data is being gathered through the Regional Board's Resolution requiring sediment clean-up at NASSCO. The tentative Order does not need a sediment monitoring deadline. The Regional Board can request additional data through the sediment clean-up being conducted by NASSCO or by modifying the monitoring report if necessary. Additional sediment monitoring is unnecessary at this time.

Finding 16—Best Management Practices (BMPs): BMPs should not replace numeric limitations required under California Toxics Rule (CTR)

Comment: The CTR sets numeric-specific effluent limitations for 126 priority pollutants, including copper, nickel, and zinc, that 'causes or has the reasonable potential to cause' a violation of CTR. As the Fact Sheet of this Tentative Order point out, copper, nickel, and zinc were found at high enough levels to require frequent monitoring.

In addition, 40 CFR 122.44(k)(3) states that Best Management Practices (BMPs) are permissible for the control or abatement of discharge of pollutant *only* when "numeric effluent limitations are infeasible." The Board has not made any such finding in this Tentative Order. Absent a demonstration of infeasibility and a finding expressing that, BMPs are not adequate in the Tentative Order to comply with CTR.

Furthermore, the argument that 122.44(k)(2) applies instead of 122.44(k)(3) is incorrect. Section 402(p)(3)(B)(iii) of the CWA, which permits the use of controls that reduce the discharge of pollutants to the maximum extent practicable, including best management practices, clearly only applies to discharges from municipal storm sewers, not industrial storm water as is the case in this Tentative Order.

Response: The frequency and duration of storm events are highly variable. The subsequent storm water discharges and the potential impacts caused to the receiving water from storm events are also highly variable. The use of BMPs is a recognized approach to control the pollutants from storm water discharges.

The USEPA has adopted a *general industrial storm water permit* for various industrial facilities under its jurisdiction. The USEPA permit, the *Final Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water, Multi-Sector General Permit for Industrial Activities, Federal Register, Monday, October 30, 2000,* (Multi-Sector Permit) did not develop WQBEL for industrial storm water discharges. Even though the National Toxics Rule (40 CFR 131.36, added at 57 FR 60910, December 22, 1992) was available for use as water quality criteria to develop numerical effluent limitations, the USEPA has not developed WQBEL for industrial storm water discharges subject to its jurisdiction.

The Multi-Sector Permit, *Sector R*, includes requirements for *Ship and Boat Building or Repair Yards*. According to the Multi-Sector Permit (p. 64766-69), when the industrial storm water discharge has concentrations greater than the *USEPA Benchmark Values* (p. 64767, Table 3), the industrial facility is required to increase monitoring frequencies. Additionally, the Multi-Sector Permit states that the facility operators should review and modify their storm water pollution prevention plans (SWPPP) and best management practices (BMP) at their facility to try to improve the quality of the storm water discharge when discharge concentrations are greater than the *USEPA Benchmark Values*. The USEPA Benchmark Value for copper concentrations is 63.6 μg/L. The USEPA Benchmark Value for zinc is 117 μg/L.

While the *USEPA Benchmark Values* are not an enforceable numeric limit, they are used to indicate concentrations of concern and to alert the regulated discharger to take actions to lower

the concentrations in its discharge. When comparing the chemical concentrations identified in the NASSCO storm water discharges to the *USEPA Benchmark Values,* some of the copper and zinc concentrations were significant.

The NASSCO facility has installed and applied various BMPs to control the discharge of pollutants in its storm water discharges. Currently the shipyard is diverting its industrial storm water discharges to the sanitary sewer system.

The *Introduction* to the Implementation Policy, p.1 footnote 1, declares . . . *This Policy does not apply to regulation of storm water discharges.* The Implementation Policy was not used to establish effluent limits for the discharges of industrial storm water

Finding 23—Intake Credits

Comment: In general we are opposed to *intake credits.* The Bay is highly polluted from all of the controlled and uncontrolled discharges and intake credits should not allow pollution to be discharged in excess of criteria.

Response: As currently proposed the tentative order does not allow *intake credits.* In addition, the State Implementation Policy does allow for intake credits. Once the data is collected and analyzed, any determination to allow *intake credits* would be considered according to the analysis and according to state and federal laws and regulations.

DISHARGE SPECIFICATIONS

#1 Need to add pollutant limitations

Comment: Discharge limitations must be added for those contaminants that were found in the discharges from the yards. The standards must include copper, zinc, antimony, arsenic, and selenium. Limitations must be included to ensure compliance with the CTR.

Response: Discharge limitations are not necessary at this time. The tentative Order requires additional monitoring of copper, nickel, and zinc in the discharges of fire protection water, hydrostatic relief water and flood water. Effluent limitations may be established after an analysis of the monitoring and receiving water data.

#2 Need to add temperature limitations

Comment: The tentative Order should have temperature limitations for the discharges.

Response: The tentative Order has been revised to include temperature limitations of *Not more that 20° F greater than natural temperature of receiving waters* (p. 8, Table 1. Effluent Limitations.)

#3 No credits for intake toxicity

Comment: We oppose the allowance for toxicity credits for discharges from non-contact cooling water, fire protection water, and floating drydock ballast tank water.

Response: As previously mentioned, the State Implementation Policy does allow for intake credits. Once the monitoring data for the discharges is collected and analyzed, any determination to allow *intake credits* would be considered according to the analysis and according to state and federal laws and regulations.

RECEIVING WATER LIMITATIONS

Comment: Receiving water limitations are not numeric/specific and no monitoring is required.

Response: Receiving water limitations are narrative. An analysis of the potential for receiving water impacts was conducted according to the Implementation Policy. Monitoring of the discharge will indicate if a potential exists for an impact to the receiving water.

PROVISIONS

Provisions #7

Comment: The Provision is not clear that if a BMP fails, or a discharge causes or contributes to a violation, what happens after the BMP is re-evaluated and a report is done. At some point, it needs to be made clear that there is a violation of the permit and that enforcement action will be taken.

Response: The BMP modification is an iterative process; however, modifications do not of themselves negate a potential violation. The determination of any violations and proper enforcement response will be made when the violation incident occurs. Monitoring is required of the effluent discharges and can be used to determine if there is a reasonable potential for violations of water quality criteria. The determination of a violation will be made according to state and federal laws and regulations.

MONITORING AND REPORTING PROGRAM

Point Source Discharges

Comment: Though we appreciate monitoring for copper, without a limit the MRP is meaningless. Monitoring for antimony, arsenic, selenium, and zinc must be added.

Response: Monitoring of the wastewater discharges to the Bay has been and will continue to be required. The CTR concentration criteria for antimony is 4,300 μg/L. The monitoring data indicates that antimony concentration in the fire protection water, and the hydrostatic relief waters were 0.06 μg/L. The CTR concentration criteria for selenium is 71 μg/L. The monitoring data indicates that the selenium concentrations in the fire protections water and the hydrostatic relief waters were 0.87 μg/L. Therefore, the data indicates that antimony and selenium do not have a reasonable potential to cause a violation of water quality criteria.

J. Waste Hauling Log

Comment: The name, address, contact, and license number of the waste hauler should be required in the reporting requirements for the NPDES permit. This information is relevant for public review of the monitoring data.

Response: NASSCO or the waste hauler for NASSCO is required to manifest the materials taken from the facility. At this time, the Regional Board staff does not agree that there is a need for the manifest or that a copy of the manifest would benefit water quality (CWC, Section 13267(b)(1)). The tentative Order requires extensive monitoring. Requiring additional information without a need or benefit is not an efficient use of NASSCO and the Regional Board resources.

Emerging Issue

Comment: The quality and potential need for treatment of runoff after the 1st flush has been diverted needs to be established. The science to date shows that toxicity and contamination is reduced but it is not clear if the reductions are great enough to meet water quality protection standards. We recommend that a working group or other effort be established to begin to examine and, if necessary, address the issues of treatment of storm water runoff, improvement of BMPs, and other actions necessary to ensure that runoff after diversion also meets protection standards for San Diego Bay.

Response: Comment noted. Some individual efforts are being taken to characterize or treat the industrial storm water discharges. The Navy is studying the toxicity of the storm water runoff, and NASSCO has installed and is continuing to test a pilot project to treat industrial storm water runoff.